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*Attorneys for Plaintiff Lisa Black*

**BEFORE THE BOARD OF EDUCATION**

**LISA BLACK,**

**Complainant,**

**vs.**

**JIM BREWER, individually and in his  
capacity as Acting Principal for Hopwood  
Junior High School, and COMMONWEALTH  
OF THE NORTHERN MARIANA ISLANDS  
PUBLIC SCHOOL SYSTEM,**

**Respondents.**

**CASE NO. \_\_\_\_\_**

**COMPLAINANT'S [PROPOSED]  
FINDINGS OF FACT AND  
CONCLUSIONS OF LAW AND  
ORDER**

Complainant Lisa Black, by and through counsel, hereby submits her [Proposed]  
Findings of Fact and Conclusions of Law and Order.

Dated: October 7, 2005.

O'CONNOR BERMAN DOTTS & BANES  
Attorneys for Plaintiff Lisa Black

By:   
George L. Hasselback

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**[PROPOSED] FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND ORDER**

**I.**

**INTRODUCTION**

1. Complainant initiated a grievance pursuant to PSS Employment of Certified Handbook, Chapter 5 § 5401. The grievance was filed on May 19, 2005.

2. On July 15, 2005, Dr. Rita Hocog Inos made a determination to deny Complainant's grievance.

3. On August 12, 2005, Complainant appealed the denial to the Board.

4. On September 22 and 23, 2005, the Board conducted a hearing on Complainant's grievance. At the conclusion of that hearing, the Board directed that the parties file proposed findings of fact and conclusions of law.

**II.**

**PARTIES INVOLVED**

5. Complainant Lisa Black ("Ms. Black") is a citizen of the United States and, at all times relevant to this action, a resident of the CNMI.

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6. Respondent Jim Brewer ("Mr. Brewer"), upon information and belief, is a citizen of the United States and, at all times relevant to this action, a resident of the CNMI. At all times relevant to this action, Mr. Brewer acted as the principal of Hopwood Junior High School ("Hopwood").

7. Respondent Commonwealth of the Northern Mariana Islands Public School System ("PSS") is a non-profit corporation organized pursuant to CNMI statute with its principal place of business in the CNMI.

### III.

## FINDINGS OF FACT

8. In or about March of 2004, Ms. Black began working as a teacher at Hopwood.

9. During the initial portion of her tenure, Ms. Black received favorable evaluations and was regarded as a competent and effective teacher by her supervisors and peers. Specifically, her relationship with Mr. Brewer was both professional and congenial.

10. Between the beginning of her tenure at Hopwood and October 6, 2004, members of the Hopwood faculty and staff became concerned with the qualifications and competence of Hopwood's Vice Principal, a Ms. Beth Nepaial ("Ms. Nepaial"). Because of these concerns, several members of the staff and faculty participated in the drafting of a "letter of concern" ("the letter").

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1           11. On October 6, 2004, the letter was delivered to the administration of PSS and the  
2 Commonwealth's Board of Education. Upon receipt of this letter, the aforementioned contacted  
3 Mr. Brewer and tasked him with investigating these concerns.  
4

5  
6           12. After being made aware of this letter, Mr. Brewer formulated the erroneous belief  
7 that Ms. Black was responsible for drafting it.  
8

9           13. Acting upon this belief, Mr. Brewer began to single out Ms. Black for disparate  
10 treatment to include selective enforcement of policies, intimidation and harassment.  
11 Additionally, despite no change in her performance as a teacher, Ms. Black began to receive  
12 unfavorable evaluations in retaliation for her perceived involvement with the drafting and  
13 delivery of the letter.  
14

15  
16           14. Ms. Black was criticized for having several dolls that were given to her by her  
17 students, because one of them was a witch. However, Mr. Brewer himself has a voodoo doll in  
18 his office with pins stuck in it.  
19

20  
21           15. Ms. Black's students were given misleading and highly suggestive instructions to  
22 write down what they did not like about Ms. Black. These instructions were only given to Ms.  
23 Black's students and to no others. These instructions were structured in such a way that would  
24 garner only negative comments from Ms. Black's students.  
25

26           16. A student was interviewed after school hours and off of school property  
27 regarding Ms. Black outdoors. After the interviewer bought him some food, she proceeded to  
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1 inquire into Ms. Black's flaws and question the student about the possibility of Ms. Black being  
2 a "mind reader" or a "witch".  
3

4  
5 17. Ms. Nepaial conducted Ms. Black's performance evaluation even though she had  
6 not viewed her class anytime that school year to comply with the policies governing such  
7 reviews. While the evaluation was within 12 months of a prior observation of Ms. Black's class  
8 by Ms. Nepaial, the procedure requires an observation to be conducted during that "school  
9 year."

10  
11 18. Ms. Black was singled out for critique for interrupting other classes even though  
12 this was common practice among teachers at Hopwood. Ms. Black kept a list for several weeks  
13 and determined that her class was interrupted several times a day. In fact Mr. Brewer  
14 interrupted her class to request she meet with him about interrupting classes.  
15

16  
17 19. This retaliatory behavior culminated on April 25, 2005, when Ms. Black received  
18 notice that her contract of employment would not be renewed.  
19

#### 20 IV.

### 21 CONCLUSIONS OF LAW

#### 22 A. Violation of Civil Rights

23  
24 20. At all relevant times, Mr. Brewer was acting under color of law.  
25  
26  
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1           21. Mr. Brewer acted in reckless disregard as to the civil rights of Ms. Black by  
2 refusing to renew her employment contract in retaliation for actual and/or perceived exercises of  
3 her right to free speech and/or religion as guaranteed under the First Amendment to the United  
4 States Constitution.  
5

6  
7           22. Mr. Brewer acted in reckless disregard as to the civil rights of Ms. Black by  
8 establishing and/or implementing policies and/or procedures that resulted in a failure to renew  
9 her employment contract in retaliation for actual and/or perceived exercises of her right to free  
10 speech and/or religion as guaranteed under the First Amendment to the United States  
11 Constitution.  
12

13  
14           23. The conduct of Mr. Brewer as described herein resulted in the non-renewal of  
15 Ms. Black's employment contract for a Constitutionally impermissible reason and therefore  
16 deprived her of her right to due process under the Fourteenth Amendment of the United States  
17 Constitution.  
18

19           24. The conduct of Mr. Brewer as described herein resulted in financial and  
20 emotional damage to Ms. Black, entitling her to damages pursuant to 42 U.S.C. § 1983 and §  
21 1988, including back pay, punitive damages and attorneys' fees.  
22  
23

24 **B. Wrongful Discharge**

25           25. The actions of Mr. Brewer and/or PSS were in direct contravention of the public  
26 policy of the Commonwealth of the Northern Mariana Islands including, but not limited to, the  
27 fact that they were performed in retaliation for the actual and/or perceived exercise of Ms.  
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1 Black's right to freedom of speech and/or religion as guaranteed under both the United States  
2 and Commonwealth Constitutions.

3 **C. Violation of Civil Rights Under the CNMI Constitution**

4  
5 26. The actions of Mr. Brewer and/or PSS deprived Ms. Black of rights guaranteed  
6 by the Constitution of the Northern Mariana Islands, including, but not limited to her right under  
7 Article I § 5 to due process of law, her right of individual privacy under Article 1 § 10 and her  
8 rights to freedom of speech and/or religion under Article 1.

9  
10 27. The actions of Mr. Brewer and PSS caused Ms. Black to suffer injury and  
11 damages, and she is therefore entitled to damages.

12  
13  
14 **D. Intentional Infliction of Emotional Distress**

15 28. The acts of Mr. Brewer and/or PSS as described above, were done willfully,  
16 maliciously, outrageously, deliberately and purposefully with the intention to inflict emotional  
17 distress upon Ms. Black.

18  
19 29. The acts of Mr. Brewer and/or PSS were also done in reckless disregard of the  
20 probability of causing Ms. Black emotional distress.

21  
22  
23 30. These acts did in fact result in severe and extreme emotional distress, and she is  
24 therefore entitled to damages for emotional distress.

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1 **E. Negligent Infliction of Emotional Distress**

2 31. The conduct of Mr. Brewer and/or PSS caused Ms. Black severe anxiety that  
3 continues to this date and continues to make her constantly apprehensive and fearful that she  
4 will not be able to secure employment and consequently have no means by which to support  
5 herself and that her professional reputation has been irrevocably damaged.  
6

7  
8 32. Having resulted in such severe and extreme emotional distress, the actions of Mr.  
9 Brewer and PSS have caused Ms. Black damages for which she entitled to compensation.  
10

11 **F. Breach of Contract**

12 33. Ms. Black was initially hired by PSS at an international schools job fair that took  
13 place in Boston, Massachusetts in 1996. This arrangement was memorialized in a legally  
14 binding contract between PSS and Ms. Black.  
15

16  
17 34. As part of her compensation package, Ms. Black's contract included a "housing  
18 allowance."  
19

20  
21 35. Several months after her arrival and the commencement of her employment, PSS  
22 instituted new pay scales and demanded that Ms. Black sign a waiver so that they could cease  
23 paying her the "housing allowance."  
24

25 36. Ms. Black never signed any such waiver.  
26  
27  
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1 37. In spite of her refusal to agree to waive this portion of her compensation, PSS  
2 ceased paying Ms. Black the "housing allowance" which constituted a material breach of her  
3 employment contract.  
4

5 38. Ms. Black complied with all terms and conditions of her employment contract.  
6  
7

8 39. This breach resulted in financial damage to Ms. Black and she is therefore  
9 entitled to damages for this breach.  
10  
11

12 **O R D E R**  
13

14 WHEREFORE, the Board Orders as follows:  
15

16  
17 A. The unfavorable evaluation made of Complaint on April 18, 2005, is stricken  
18 from complainant's personnel record.  
19

20 B. All negative comments made by Mr. Brewer and Ms. Nepali that appear in the  
21 Personnel File for the Complainant are stricken.  
22

23 C. Complainant is ordered reinstated to a new contract at Hopwood High School.  
24

25  
26 D. It is further Ordered that Complainant shall not be retaliated against by anyone in  
27 the administration at Hopwood.  
28

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1  
2 E. PSS shall pay Complainant for all of her back wages during the time  
3 Complainant was unemployed. Payment shall be made to her within thirty (30) days of the  
4 entry of this Order.  
5

6 F. Complainant is also awarded a sum equal to the back wages she is owed to  
7 compensate her for the emotional distress she suffered.  
8

9 G. PSS shall pay Complainant's reasonable attorneys fees. Complainant shall  
10 submit the billing from her attorney within ten (10) days from the entry of this Order. Counsel  
11 for the Commissioner shall then have seven (7) days to comment on the attorneys fees  
12 submission. The Board shall then, based on the two submissions, determine the amount to  
13 award Complainant for her attorneys fees.  
14  
15

16 **IT IS SO ORDERED, ADJUDGED and DECREED,**  
17

18 Date: \_\_\_\_\_, 2005  
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22 \_\_\_\_\_  
23 Chairman of the Board  
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10-7-05 / 2:51p  
Board of  
Directors

**BEFORE THE BOARD OF EDUCATION HEARING PANEL**

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After addressing preliminary matters, the hearing commenced with the offer to Black to present her grievance. Black did not wish to present any witness testimony. Rather, she

1 submitted her grievance as written along with the submission of one document labeled "Tape  
2 Recording Transcripts".

3 Essentially, Black's complaint is that Mr. Brewer made disciplinary and employment  
4 decisions based on Black's alleged involvement with a "Letter of Concern" complaining about  
5 HJHS Vice-Principal Beth Nepaial. Black claims that she became a target of harassment and  
6 unfair treatment. Black alleges that Mr. Brewer violated Public School System (PSS) regulations  
7 pertaining to dishonesty, discrimination, immoral conduct, and cruelty to students. Claiming she  
8 was singled out, Black contends that letters of concern and reprimand regarding her conduct  
9 were unjustified. She also challenges the appropriateness of her performance evaluation and Mr.  
10 Brewer's decision not to renew her contract.

11 Chapter 5 Section A of the PSS Regulations for Certified Personnel lists matters that are  
12 included and excluded from the grievance process. Section 5151 permits complaints regarding  
13 violations of regulations, discrimination, formal reprimands and performance evaluations.  
14 Section 5102 specifically excludes discretionary decisions of non-renewal. The Panel, therefore,  
15 will address the alleged regulation violations and harassment and the appropriateness of the  
16 letters of reprimand and the performance appraisal.

17 Section 5606 states "the employee shall have the burden of proving its grievance by a  
18 preponderance of the evidence." Accordingly, Black must prove each alleged violation by a  
19 preponderance of the evidence. Black claims that Mr. Brewer violated PSS Regulations for  
20 Certified Personnel. As an employee on a full year as opposed to a school year schedule, Mr.  
21 Brewer's conduct is governed by the PSS Regulations for Non-Certified Personnel.  
22 Nevertheless, the Panel will address Black's claims of violation one by one.  
23

24 **Dishonesty Claim:** PSS Regulations for Certified Personnel §3507 provides:

25 Dishonesty. No employee shall engage in any dishonest act while  
26 performing the duties of his or her employment. Examples of such  
27 conduct include, but are not limited to, misreporting sick leave, sign-  
28 in times or facts related in the application for employment or  
certification.



Black's complaint makes blanket statements regarding Mr. Brewer's alleged dishonesty and claims that he withheld a copy of a performance evaluation. Black's complaint states that after she provided details regarding the evaluation that Mr. Brewer gave her a copy indicating that the "filing system is not what it could be." Black did not submit any other evidence regarding dishonesty. There is no reason, therefore, to believe that the evaluation was intentionally kept from Black or that Mr. Brewer engaged in dishonest conduct.

**Discrimination Claim:** PSS Regulations for Certified Personnel §6102 provides:

Discrimination and Harassment Prohibited. No employee may discriminate or harass another person on account of that person's sex, sexual orientation, race, color, religion, national origin, age, disability, or in retaliation for the exercise of any rights protected by this chapter.

Black's complaint does not contain any evidence that she was discriminated against based on sex, sexual orientation, race, color, religion, national origin, age, or disability. Mr. Brewer questioning the truthfulness of Ms. Black is not discrimination or immoral conduct. Even if the alleged comments in her grievance about "little Manila" or jokes about Mexicans were true, the comments do not amount to discrimination and could not have been directed at Ms. Black, who is a Caucasian, middle-aged female.

**Immoral Conduct Claim:** PSS Regulations for Certified Personnel 3509(a) provides:

Any employee who engages in immoral conduct which creates a significant danger of harm to students or co-workers, or which is known among his or her students and will impair the ability to teach those students is a ground for dismissal.

Black contends in her grievance that meetings initiated by the Hopwood Principal during her classroom time amounted to immoral conduct. Once again, the complaint contains broad statements without evidentiary support. There are no details regarding whether such interruptions even occurred. Moreover, it is not a violation of any regulation for an administrator to request the presence of a teacher during class time to discuss parent or co-worker complaints or teacher performance issues. Again, even if her allegations as written were true, the conduct



described in Black's complaint does not even approach the level of creating a significant danger of harm to students or staff required to prove immoral conduct.

**Cruelty to Students Claim:** PSS Regulations for Certified Personnel §3405 provides:

a. A teacher has the right to exercise *in loco parentis* authority over students and may control, restrain and correct them to further educational purposes; however, such actions are subject to, but not limited to, the following limitations:

(1) Corporal Punishment: Teachers are forbidden to use corporal punishment on any student.

(2) Psychological Harm: Teachers are forbidden to engage in any act of psychological cruelty which inflicts emotional trauma on a student.

In her complaint, Black describes an incident where Mr. Brewer went to Black's classroom at the beginning of first period to give her a memo. Black claims that Mr. Brewer interrupted her class time and caused the students to become concerned and worried. Yet again, even if true, this does not amount to cruelty of students. In his testimony to the panel, Mr. Brewer related the incident in detail. He told the panel that he waited at Black's classroom for more than fifteen minutes before first period was scheduled to begin. Although teachers are required to report to class by 7:45 am, Black drove up to her classroom just at 8:00 when students were ready to enter her classroom. Because Black had been failing to report to the office for meetings with the Administration, Mr. Brewer took the opportunity to meet with Black for a few minutes before class. Class time would not have been interrupted and the students would not have had to wait if Black had reported to her class on time. Therefore, any disruption was actually caused by Black. Black failed to submit any evidence that Mr. Brewer was cruel and inflicted emotional trauma on any student.

**Letters of Reprimand:**

Black received a letter of reprimand on January 11, 2005 for failing to provide substitute teaching coverage and embarrassing a student. During the hearing, Black admitted that she entered another teacher's classroom to hand out her grades and that she teased Sam Nepaial in

1 front of other students. Sam is the son of Beth Nepaial, Vice-principal at Hopwood. As a new  
2 student transitioning to Hopwood, Sam was attending Hopwood classes at the end of the  
3 semester to ease the transition. Black admitted that she had problems with Ms. Nepaial, yet she  
4 chose to single Sam out and question him in front of other students. She admitted during the  
5 hearing that she questioned him about whether he was afraid of her. Singling out a new male  
6 student and asking him if he is afraid of her in front of other students, demonstrated, at a  
7 minimum, poor judgment. When considered in the context of Black's overall aggressive  
8 behavior and Black's ongoing dispute with the student's mother, her actions were unkind and  
9 inappropriate. She decided to take out her frustrations with the mom on the son. In doing so, she  
10 caused embarrassment to the student and pain to his mother.

11 The January letter also reprimanded Black for failing to report for substitution coverage.  
12 Her failure to report for substitution is clear. Black admitted that she did not provide substitute  
13 coverage. All teachers were informed about the substitution schedule. Black admitted that she  
14 received the schedule regarding substitutions in her box, but that she did not read it. Mr. Brewer  
15 testified that an employee looked for Black; however, she was not found on campus.  
16 Furthermore, Black refused to provide a reason for her missed substitution even though Vice-  
17 Principal Pastor Gagaring requested an explanation as evidenced by Mr. Gagaring's memo of  
18 January 11, 2005. Black failed to perform her teaching duties, which warranted a reprimand.  
19 The January letter of reprimand shall remain filed in Black's personnel file with the Human  
20 Resources Office.

21 Black received another letter of reprimand dated February 14, 2005. Ms. Grayer testified  
22 during the hearing that Black interrupted class to ask if Ms. Grayer had submitted a complaint to  
23 the administration against Black. Grayer related that Black was inquiring about an incident with  
24 another teacher, Rory Starkey, wherein Black was hostile and threatened to sue Starkey. After  
25 receiving the complaint from Ms. Grayer that Black had interrupted her class to discuss this  
26 personal issue, Mr. Brewer met with Black. Black submitted the "Tape Recording Transcript"  
27 which allegedly sets forth the conversation during this meeting of February 9. In the transcript,  
28 Black admits to interrupting Ms. Grayer's class. In fact when asked if she interrupted the class  
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